Senate File 333 - Introduced

SENATE FILE 333
BY ERNST

A BILL FOR

- $\ensuremath{\mathbf{1}}$ An Act establishing a civil cause of action for physical injury
- 2 or emotional distress resulting from an abortion.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 1 Section 1. <u>NEW SECTION</u>. **686.1 Cause of action** abortion 2 resulting in physical injury or emotional distress.
- 3 1. A woman upon whom an abortion has been performed may
- 4 maintain a cause of action against the physician who performed
- 5 the abortion to recover damages for any physical injury or
- 6 emotional distress, whether or not independent of the physical
- 7 injury, proximately caused as the result of the physician's
- 8 negligence or failure to obtain informed consent prior to
- 9 performance of the abortion.
- 10 2. Notwithstanding any law to the contrary regarding
- 11 limitations of actions, an action under this section may be
- 12 brought at any time during the lifetime of the woman.
- 3. The signing of a consent form by the woman prior to the
- 14 abortion shall not negate the cause of action, but may reduce
- 15 the recovery of damages to the extent that the content of the
- 16 consent form informed the woman of the risk of the type of
- 17 injuries for which the woman is seeking damages.
- 18 4. This section shall not be construed to render any other
- 19 statutory or common law cause of action for medical malpractice
- 20 otherwise available inapplicable to abortion procedures or
- 21 diminish the nature or the extent of those causes of action.
- 22 The cause of action expressly specified in this section is in
- 23 addition to any other statutory or common law cause of action.
- 24 5. A cause of action shall not be brought under this section
- 25 if the abortion was performed due to a medical emergency.
- 26 6. For the purposes of this section:
- 27 a. "Abortion" means abortion as defined in section 146.1.
- 28 b. "Damages" means all special and general damages which
- 29 are recoverable in tort for injuries incurred by the woman
- 30 including but not limited to actual and punitive damages.
- 31 c. "Emotional distress" means a severe, debilitating, and
- 32 persistent negative emotional or mental reaction including
- 33 but not limited to mental anguish, fright, nervousness,
- 34 grief, anxiety, worry, mortification, shock, humiliation, and
- 35 indignity, as well as physical pain.

- 1 d. "Informed consent" means the duty of a physician to
 2 disclose all facts about the nature of the procedure, the risks
 3 of the procedure, and the alternatives to the procedure that a
 4 reasonable patient would consider significant to the patient's
 5 decision to undergo or forego an abortion.
- 6 e. "Medical emergency" means any condition which, on the
 7 basis of the physician's good faith clinical judgment, so
 8 complicates the medical condition of a pregnant woman as to
 9 necessitate the immediate abortion of her pregnancy to avert
 10 her death or for which a delay will create serious risk of
 11 substantial and irreversible impairment of a major bodily
 12 function.

13 EXPLANATION

- 14 This bill establishes a cause of action that may be 15 maintained by a woman upon whom an abortion has been performed 16 against the physician who performed the abortion to recover 17 damages for any physical injury or emotional distress 18 proximately caused as the result of the physician's negligence 19 or failure to obtain informed consent prior to performance of 20 the abortion. The action may be brought at any time during the 21 lifetime of the woman. The bill provides that the signing of a 22 consent form by the woman prior to the abortion does not negate 23 the cause of action, but may reduce the recovery of damages 24 to the extent that the content of the consent form informed 25 the woman of the risk of the type of injuries for which the 26 woman is seeking damages. The bill also provides that other 27 existing statutory or common law causes of action for medical 28 malpractice are not to be construed to be rendered inapplicable 29 to abortion procedures or diminish the nature or the extent 30 of those causes of action. The cause of action expressly 31 specified in the bill is in addition to any other statutory or 32 common law cause of action. A cause of action is prohibited 33 under the bill if the abortion was performed due to a medical 34 emergency.
- 35 The bill defines "abortion", "damages", "emotional

- 1 distress", "informed consent", and "medical emergency" for the $\,$
- 2 purposes of the bill.